FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No. 5335/2006
(Nandlal Patil Kapgate Vidyalaya thro. Its Headmaster & others **Versus** Deputy Director of Education Nagpur & others)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Khajanchi, Advocate for the petitioner.
Mr. Deopujari, A.G.P. for the respondent nos.1 to 3.
Mr. Borkar, Advocate for the Intervenors R-5 & 6.

CORAM : D.D. SINHA AND
SMT. VASANTI A. NAIK, JJ.

DATED : NOVEMBER 21, 2007.

Heard Mr. Khajanchi, the learned counsel for the petitioners, Mr. Deopujari, the learned Assistant Government Pleader for the respondent nos.1 to 3 and Mr. Borkar, the learned counsel for the intervenors/respondent nos.5 & 6.

This writ petition is directed against the order dated 07.07.2006 passed by the Education Officer, Zilla Parishad, the order dated 13.07.2006 passed by Deputy Director of Education, Nagpur as well as the communication

dated 02.12.2006 issued by the Deputy Director of Education to the Education officer, Zilla Parishad and Ad-hoc Committee Education Society, Sakoli.

The counsel for the petitioner has submitted that in the instant case, all these orders are not sustainable in law since as per the procedure stipulated, it is the Coordination Committee which has been vested with the power to issue transfer order of the employees, and therefore, the impugned communications issued by the authorities are bad in law.

It is contended that the only reason given by the competent authority in order to give a go by to the Resolution dated 17.06.2006 passed by the Coordination Committee is that the resolution is not passed by Ad-hoc Committee with majority. It is submitted that in the instant case, question of passing resolution by majority by the Ad-hoc Committee does not arise since the Committee competent to issue order of

transfer is Coordination Committee. It is, therefore, contended that the impugned communications are bad in law.

Shri Deopujari, the learned Assistant Government Pleader for the State and Shri Borkar, the learned counsel for the intervenors/ respondent nos.5 and 6 have submitted that in the instant case, the Joint Charity Commissioner, by an order which was passed in February-2003, appointed Ad-hoc body for the purpose of administration of the concerned society. It is further contended by the counsel for the respondent that in the said order, there is specific direction that any decision taken by Ad-hoc body should be by majority, while administering the administration of the society. It is not in dispute that the petitioners are the Headmasters of the schools run by the society.

In the backdrop of the above referred facts, there is no reason for us to disbelieve the statement made by the counsels for the

respondents that the Joint Charity Commissioner has constituted the committee and issued the said directions particularly because there is nothing placed on record by the petitioners in order to hold otherwise.

The order of the Joint Charity Commissioner is not a subject matter of the challenge in the present writ petition. In absence thereof, it is difficult for us to appreciate the contention advanced by the learned counsel for the petitioner, particularly in the face of the directions issued by the Joint Charity Commissioner whereby the members of the Ad-hoc Committee are required to take decisions by majority while taking care of the affairs of the trust.

We have not expressed anything in respect of validity of the order passed by the Joint Charity Commissioner in the present writ petition since it is not the subject matter of the

present writ petition. However, we are of the view that till such time the said order is in existence, the Ad-hoc Committee undoubtedly would be required to take a decision by majority and any decision which is taken ignoring the majority, would not be sustained in law.

In the circumstances, the writ petition suffers from lack of merits, and hence, the same is dismissed with no order as to costs.

JUDGE **JUDGE**

APTE